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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,176	01/29/2001	James A. Proctor JR.	2479.2071-000	1093

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT PAPER NUMBER

2611

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/772,176	Applicant(s) PROCTOR, JAMES A.	
	Examiner Kevin M. Burd	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This office action, in response to the amendment filed 7/28/2006, is a non-final office action.

Response to Arguments

2. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new grounds of rejection.

Claim Objections

3. Claim 42 is objected to because of the following: the term "instructions" should be changed to "computer readable instructions" and the term "processor" should be changed to "computer" so the language is consistent with the language discussed in MPEP 2106 and the interim guidelines for patent applications for patent subject matter eligibility claimed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 42 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had

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possession of the claimed invention. The computer readable medium ... is not disclosed in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-14, 18-34 and 38-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Porter et al (US 6,977,912).

Regarding claims 1, 21, 41 and 42, Porter discloses a communication system and a method of communicating between a base station and subscriber terminals shown in figure 1. The subscriber terminal monitors a channel and generates one or more channel metrics. The generated metrics are communicated back to the cell access point over a signaling channel and a new frequency is allocated to the cell if it is determined from the metrics that the presently allocated channel is suffering interference (abstract).

Regarding claims 2 and 22, Porter further discloses the fixed base station and the mobile subscriber terminal (column 1, lines 58-67) and the metrics may be collected at each subscriber terminal (column 8, lines 25-29).

Regarding claims 3, 4, 23 and 24, Porter further discloses the metrics are determined according to the distance to the subscriber unit (column 13, lines 60-67).

Regarding claims 5-7 and 25-27, Porter further discloses the metrics are computed from the coding gain (column 9, lines 13-27).

Regarding claims 8-13 and 28-33, Porter further discloses the metrics are calculated according to errors in the received transmissions (column 8, lines 30-60).

Regarding claims 14 and 34, Porter discloses the control server will collect the information regarding the calculated metrics and execute frequency reassignment when necessary (column 8, lines 21-24).

Regarding claims 18-20 and 38-40, the modulation attributes measured are disclosed in column 8, lines 30-60.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15-17 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al (US 6,977,912) in view of McNicol et al (US 5,940,454).

Regarding claims 15-17 and 35-37, Porter discloses the communication system and a method of communicating between a base station and subscriber terminals stated above. Porter does not disclose changing an antenna mode in response to the metrics.

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McNicol discloses a receiver, shown in figure 5, responsive to a quality metric that controls the selection of the antenna (abstract). The antennas may be omni directional or sectored (column 9, lines 5-13). McNicol overcomes channel fading and channel distortion (column 3, lines 24-29) to allow the received signals to be received with less errors. For this reason, it would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teaching of McNicol into the communication system of Porter.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M. Burd whose telephone number is (571) 272-3008. The examiner can normally be reached on Monday - Friday 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kevin M. Burd
11/8/2006


KEVIN BURD
PRIMARY EXAMINER